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**Sample Discretionary Trust**

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THIS DEED is dated as provided in Schedule 1

PARTIES:

The Settlor AND the Trustee named in Schedule 1.

BACKGROUND:

- (a) The Settlor wishes to establish by this Deed a Trust to make certain provisions for the benefit of the Beneficiaries.
- (b) The Settled Sum referred to in Schedule 1 has been paid to the Trustee by the Settlor (the receipt of which is acknowledged) to be held on the trusts and on the provisions of this Deed.

## IT IS AGREED:

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- 1. In this Deed the words in Schedule 5 have the meanings described in that schedule and its provisions apply unless the context otherwise requires.

## SETTLEMENT

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- 2. (a) The Settlor settles by this Deed on the Trustee the Settled Sum. The Trustee holds the Trust Fund on the trusts and on the terms of, and subject to this Deed including its Schedules.
- (b) The following schedules are part of this Deed and contain the following:-
  - (i) Schedule 1: Name of Trust, Date of Deed, Name and address of Settlor, Name and address of Trustee, Settled Sum, Name and address of Appointor, Proper law
  - (ii) Schedule 2: Beneficiaries
  - (iii) Schedule 3: Excluded Persons.
  - (iv) Schedule 4: Powers of the Trustee
  - (v) Schedule 5: Definitions and Interpretation

## DISTRIBUTIONS

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- 3. (a) **Annual Distribution**  
Subject to the Trustee's power to accumulate under paragraph 6 and to this paragraph, the Trustee shall each Financial Year Distribute the Income of the Trust to the Beneficiaries and the Trustee in its absolute discretion shall determine the proportion or amount of the Income for that Financial Year to be Distributed to the Beneficiaries or any one or more of them to the exclusion of any others. A Beneficiary in whose favour a Distribution is made becomes absolutely and presently entitled to that proportion or amount. Any such Distribution may be made from any Category of Income as provided by the following provisions or elsewhere in this Deed.
- (b) **Distribution In Specie**  
Subject to sub-paragraphs 3(m), 3(n) and 3(o), prior to the close of any Financial Year the Trustee may determine that the whole or part of a Category of Income in respect of the whole or a part of any Financial Year shall be Distributed to any one or more of the Beneficiaries to the exclusion of any others to the intent that such Income is Distributed in specie, or accumulated pursuant to paragraph 6. Subject to paragraph 3(e), unless the Trustee otherwise determines, the expenses attributable to the gaining or producing of that Income shall be charged against that Income in the accounts or records of the Trust.
- (c) **Categories of Income**  
Without limiting any other provision of this paragraph 3, the Trustee may establish in the accounts or records of the Trust accounts and/or ledgers for each of the following Categories of Income,

showing the nature, source and accounting for the income and the expenses relating to that income made in the Financial Year:

- (A) dividends which under the Act:
  - (i) are fully or partly franked;
  - (ii) are unfranked;
  - (iii) to which a foreign tax credit attaches; or
  - (iv) any other separately identifiable taxation consequence or benefit is attached or arises;
- (B) income, including capital gains, which under the Act:
  - (i) has an Australian source;
  - (ii) has an ex-Australian source;
  - (iii) has a foreign tax or other credit attached;
  - (iv) is exempt from or not liable to tax or subject to differing rates of tax; or
  - (v) has or gives rise to any other separately identifiable taxation consequences or benefit including and without limitation income from assets held by the Trustee in the nature of life insurance policies or their proceeds or any other asset that may give rise to income that is excepted trust income for the purposes of the Act;
- (C) Any amount referred to in Subdivision 115-C ITAA 1997 including, without limitation, a net financial benefit or share of net financial benefit or amount to which a beneficiary is or is to become specifically entitled;
- (D) Any other category of income including, without limitation, income from a specified asset which the Trustee in its absolute discretion determines to be a separate category of income for the purposes of this Trust; and
- (E) All other Income of the Trust.

**Accounts and Records**

- (d) The Trustee may establish in the accounts or records of the Trust any further accounts or records that it considers appropriate or necessary to discharge its obligations under this Deed or under any legislation that may require the Trustee to maintain that account or record and without limitation the Trustee may record in the accounts or records of the Trust a net financial benefit or amount to which a Beneficiary is or is to become specifically entitled having regard to Subdivision 115-C ITAA 1997.

**Allocation of Expenses**

- (e) Despite any other provision of paragraph 3, expenses and outgoings of the Trust Fund may at the discretion of the Trustee be allocated against and deducted from the income of any one or more Categories of Income in such manner as the Trustee determines.

**Accounts and Records for Separate Categories**

- (f) If the Trustee establishes in the accounts or records of the Trust accounts and ledgers for separate Categories of Income and expenses related to those Categories of Income, the Trustee may also determine, allocate and record in the accounts or records of the Trust any deductions, credits or rebates or notional amounts that are allowable or available in accordance with relevant taxation legislation at the time of any determination or allocation including credits and rebates in respect of franked dividends, the flow on franking amount, payments that have been subject to PAYG withholding, PAYG credits, and income derived when there are foreign beneficiaries or foreign income.

**Distributions During Financial Year**

- (g) The Trustee may at any time during a Financial Year Distribute Income to any Beneficiary in such amount as it determines. The Trustee shall keep a record of amounts distributed in accordance with this paragraph and the time of Distribution to Beneficiaries and shall take into account at the end of each Financial Year such amounts as the Trustee determines.

- (h) The Trustee shall record in the accounts or records of the Trust in respect of each Financial Year all Distributions to the Beneficiaries in such manner as the Trustee determines.

**Deemed Accumulation**

- (i) If the Trustee has not Distributed the whole or part of the Income of the Trust (apart from any Income determined by the Trustee to be accumulated in accordance with paragraph 6) by 11.45PM on the last day of the Financial Year then the Trustee is deemed to have exercised its discretion at 11:55PM under paragraph 6(a) to accumulate that Income and the remaining provisions of paragraph 6 apply to that Income.

**Tax Payable to a Beneficiary**

- (j) Where the Trustee is required by law to pay tax in respect of Income of the Trust Distributed to a Beneficiary the Trustee may pay the same out of Income or capital to which the Beneficiary is presently entitled or may deduct the same out of moneys which may then or thereafter come into the hands of the Trustee or over which the Trustee has control and to which the Beneficiary is or becomes entitled. Tax on accumulation of Income may be paid from Income or from capital as the Trustee determines.

**Distributions Retain Identity and Character**

- (k) The Trustee may Distribute any amount that the Trustee has recorded in the accounts or records of the Trust under paragraph 3 and any such amount shall retain its separate identity and attributes on being Distributed or received by a Beneficiary.

**Sub-Trust**

- (l) Any Income Distributed to a Beneficiary is to be held by the Trustee separately on an absolute and irrevocable trust (sub-trust) for the Beneficiary and on the same terms as this Deed with the same powers of investment and to transpose investments and such separate trust shall not be affected by any later amendment of this Deed unless such Beneficiary consents in writing to such amendment. For clarity, a Beneficiary to whom a Distribution has been made, is entitled to call upon the amount Distributed if it has not been given to the Beneficiary.

**Franked Distributions and Capital Gains**

- (m) Despite any other provision of paragraph 3, if the Trustee intends to Distribute a franked distribution or a capital gain or any other Category of Income to which Subdivision 115-C ITAA 1997 may apply, the Trustee shall comply with and may avail itself of the provisions of that Subdivision and may record and comply with any other requirements of that Subdivision so that the Beneficiary to whom the Distribution is to be made becomes specifically entitled to the franked distribution, capital gain or any other Category of Income.

**Capital Gains**

- (n) Without limitation, where a Beneficiary becomes specifically entitled to a capital gain, the financial benefit to be recorded in accordance with Subdivision 115-C ITAA 1997, may be recorded no later than the end of the relevant Financial Year or in accordance with section 115.228 of the ITAA 1997, where that section applies.
- (o) For clarity, the Trustee has the power to make a Beneficiary otherwise entitled to a Distribution pursuant to this Deed, specifically entitled to a capital gain in any Financial Year and/or to make a Beneficiary specifically entitled to a franked distribution in any Financial Year.

**Deficiency**

- (p) If there is a deficiency in the amount the Trustee is required to pay in accordance with the Trustee's decision under paragraph 3, the deficiency shall be paid from capital unless the Trustee otherwise decides.

**Asset Revaluation Reserve**

- (q) The Trustee may determine if any property or change in value of property is to be treated as capital or Income of the Trust.
- (r) The Trustee may, in the books or records of the Trust and as an asset revaluation reserve or otherwise, include an amount arising from a revaluation of property.
- (s) Any amount so recorded may be Distributed by the Trustee, in accordance with the Trustee's powers.

## VESTING

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### Distribution of Trust on Vesting Date

4. (a) The Trustee shall Distribute on the Vesting Date or upon the earlier termination of the Trust the whole of the capital of the Trust either in cash or in specie to any one or more of the Beneficiaries but the Trustee shall have absolute discretion as to the proportion of the capital of the Trust to be Distributed to any such Beneficiary.

### Default Beneficiary Distribution on Vesting Date

- (b) Subject to sub-paragraph (c), if the Trustee does not exercise its powers under sub-paragraph 4(a) then the Trust Fund shall be Distributed by the Trustee on the Vesting Date as follows and if more than one, then as tenants in common in equal shares to:-

- (i) the Named Beneficiaries who are then living;
- (ii) if no Beneficiaries referred to in the preceding subparagraph are then living, to all Persons described in the next class of Beneficiaries appearing after the Named Beneficiaries in Schedule 2;
- (iii) if there are no such Beneficiaries, to all Persons described in the next class of Beneficiaries appearing in Schedule 2 and if there are no such Beneficiaries, then to all Persons described in the next following class of Beneficiaries, and so forth excluding however any Beneficiary included in any class of Beneficiaries that may be described opposite a heading "Trusts" or "Charities and Associations" in Schedule 2.

### Excluded Person Exception

- (c) Despite sub-paragraphs 4(b)(i), (ii) and (iii), if a Person would except for this sub-paragraph 4(c) be included under sub-paragraphs 4(b)(i), 4(b)(ii) or 4(b)(iii), then that Person is not included if, on the Vesting Date or earlier termination, that Person is an Excluded Person.

### Trust Liabilities on Winding Up

- (d) In the winding up of the Trust, the Trustee must pay all liabilities of the Trust and then pay or transfer in specie the remainder of the Trust Fund to the Beneficiaries so entitled.

## CAPITAL DISTRIBUTIONS

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5. (a) The Trustee may at any time prior to the Vesting Date Distribute capital or any part of it to any Beneficiary in such amount as it decides.
- (b) In respect of any Distribution of capital, whether prior to or on the Vesting Date, the Trustee may do any act or thing or exercise in its absolute discretion, any power or duty or otherwise that is contained in paragraph 3 and in this regard references in paragraph 3 to "income", "Income", or "Categories of Income" shall refer to "capital", "capital" or "categories of capital" respectively and the Trustee may otherwise distinguish between different characteristics of capital.
- (c) The Trustee shall in the event of the termination of the Trust prior to the Vesting Date, Distribute the proceeds of the Trust Fund in accordance with the provisions of this Deed.
- (d) If the Trustee becomes or may become liable to pay tax in respect of or arising out of a Distribution of capital, it may deduct and pay the same out of such Distribution, and, to the extent to which the same may be insufficient to fully discharge liability, the Trustee may pay the same from other moneys or property which may be in or come into the possession or control of the Trustee as it decides.

## ACCUMULATION, INCOME AND LOSSES

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6. (a) The Trustee may in its absolute discretion on or before the end of the Financial Year accumulate for such period as it decides but not greater than the period permitted by law, all or any part of the Income of the Trust Fund derived during that Financial Year notwithstanding the provisions of paragraph 3. Any amount accumulated shall be dealt with as an accretion to capital however the Trustee may at any time exercise its powers in relation to such amount as if it was Income, if the Trustee decides.

- (b) The Trustee may, but need not, determine that the losses of the Trust shall be borne out of future Income or out of capital.

## **TRUSTEE ACTS**

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7. The provisions of any applicable statute relating to trusts and trustees apply except in so far as such law permits exceptions and a contrary intention is expressed in this Deed.

## **BENEFICIARIES UNDER LEGAL DISABILITY**

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8. (a) Where the Trustee wishes to apply, pay or credit any amount to a Beneficiary who has become presently entitled to a share of any Income or capital but is subject to a legal disability such amount may be expended or invested by the Trustee on behalf of such Beneficiary subject to the provisions of this Deed and with the same powers of investment as if the amount formed part of the Trust Fund and the whole or any part of such amount may be applied by the Trustee for the maintenance, education, advancement in life (including past maintenance, advancement or education) or otherwise for the benefit of the Beneficiary as the Trustee may in its absolute discretion determine.
- (b) Any part of the Trust Fund to be paid by the Trustee to any infant Beneficiary under this Deed may be paid by the Trustee, in its absolute discretion, to the parent or guardian of such infant or the Person who has the apparent custody of such infant or to an account with a financial institution held for that infant and the receipt of such Person or financial institution shall be a sufficient discharge for the Trustee who shall not be liable for the application of it however the Trustee may otherwise apply it for or towards the maintenance, education, advancement in life (including past maintenance, advancement or education) without being responsible for its application.

## **APPOINTOR'S POWER OF REMOVAL AND APPOINTMENT OF TRUSTEES**

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9. (a) The Appointor holds the power to remove and/or appoint a trustee of this Trust, subject to this paragraph ("the Power of Appointment") which may be exercised by written document or by deed signed by the Appointor, whether or not it is also signed by the Trustee being removed or the new Trustee.
- (b) The following provisions apply in the following circumstances below:-
- Death of a Sole Appointor**
- (i) on the death of a sole Appointor, the Person nominated in his or her Will or other document signed by the sole Appointor as the Person to succeed him or her as Appointor or, in the absence of such a Will or other document, his or her legal personal representative, will become the Appointor;
- Death of one of the Appointors without Successor**
- (ii) if the Appointor comprises two or more Persons, then on the death of one of them, the survivor(s) becomes the Appointor [subject to paragraph 9(b)(iii)];
- Death of one of the Appointors with Successor**
- (iii) if the Appointor comprises two or more Persons, then on the death of one or more of them, the Person or Persons who have been nominated by all the Appointors in writing to succeed the deceased, becomes the Appointor with the surviving Appointor(s), if any.
- Sole Appointor's Nomination**
- (iv) the Person nominated in writing by a sole Appointor to replace him or her becomes the Appointor in accordance with its terms.
- Joint Appointor Nomination**
- (v) if the Appointor comprises two or more Persons, the Person(s) nominated in writing by all of them to replace one or more of them, becomes the Appointor with the remaining Appointor(s), if any, in accordance with its terms.

**Resignation of one of the Appointors**

- (vi) if the Appointor comprises two or more Persons, if one or more of them resigns in writing without nominating a Person(s) to replace him, her or them, then the other Appointor(s), if any remain the Appointor.

**Settlor Cannot Be Appointed Trustee**

- (c) The Appointor may exercise the Power of Appointment as he, she or they think fit, but the Settlor cannot be appointed a Trustee.

**Appointor Nomination, Resignation and Revocation to be Given to Trustee**

- (d) Any nomination or resignation of an Appointor under paragraph 9 must be given to the Trustee and any nomination may be revoked or resignation withdrawn if it has not come into effect in accordance with its terms. If a resignation does not specify a date on which it is to take effect, it takes effect on its date or on the date on which it is given to the Trustee, whichever is the later.

**Minimum and Maximum Number of Trustees**

- (e) The number of trustees of this Trust may at any time and from time to time be one but shall never at any time be more than four.

**Appointors to Act Unanimously**

- (f) If the Appointor comprises two or more Persons, they must act unanimously unless they decide otherwise by agreement in writing and signed by them. A copy of that agreement must be given to the Trustee.

**Bankruptcy, Incapacity etc of Sole Appointor or one of the Appointors**

- (g) If the Appointor, being a sole Appointor:-

- (i) becomes bankrupt or seeks relief under bankruptcy laws;
  - (ii) becomes incapable of managing their affairs (as determined by a relevant tribunal or as certified by a registered medical practitioner);
  - (iii) is acting in the capacity of or for or on behalf of a trustee in bankruptcy, or a Registrar of the Family Court of Australia, or under an order of a Federal Magistrate Court under the Family Law Act;
  - (iv) being a body corporate, has a receiver, or receiver and manager, or official manager, or provisional liquidator, or liquidator or administrator appointed or if it enters into a scheme of arrangement that is not for amalgamation or reconstruction purposes or if an order of a court made or resolution passed that will have the effect of winding it up,
- then the Power of Appointment vests in the Trustee.

- (h) If the Appointor comprises two or more persons, and one of them:-

- (i) becomes bankrupt or seeks relief under bankruptcy laws;
- (ii) becomes incapable of managing their affairs (as determined by a relevant tribunal or as certified by a registered medical practitioner);
- (iii) is acting in the capacity of or for or on behalf of a trustee in bankruptcy, or a Registrar of the Family Court of Australia, or under an order of a Federal Magistrate Court under the Family Law Act;
- (iv) being a body corporate, has a receiver, or receiver and manager, or official manager, or provisional liquidator, or liquidator or administrator appointed or if it enters into a scheme of arrangement that is not for amalgamation or reconstruction purposes or if an order of a court made or resolution passed that will have the effect of winding it up,

then the Power of Appointment vests in the other one or more of them but not any Person who is then an undischarged bankrupt, is incapable of managing their affairs as provided in sub-paragraph 9(h)(ii), who is acting as provided in sub-paragraph 9(h)(iii) or subject to any appointment or state of affairs referred to in sub-paragraph 9(h)(iv).

**Trustee Becomes Appointor**

- (i) If the Power of Appointment is vested in the Trustee pursuant to sub-paragraph 9(g) then the Trustee becomes the Appointor with the same powers as an Appointor including the power to nominate successors as provided in paragraph 9.

**Subject to Prior Nomination**

- (j) The provisions of sub-paragraphs 9(g) and 9(h) are subject to any prior nomination made pursuant to sub-paragraphs 9(b)(iv) or 9(b)(v) that has not been revoked.

### **Registration of Change of Trustee Not Required**

- (k) Nothing in this Deed requires the registration of any deed or document to effect a change in trustee or to vest the Trust's assets in a trustee.

## **SETTLOR NOT TO BENEFIT**

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10. (a) Any attempted appointment of the Settlor as a trustee of the Trust is void.
- (b) Despite any other provisions of this Deed:-
- (i) The Settlor, the Settlor's minor children and any Person claiming under or in right of the Settlor are not entitled to any interest in or benefit in or arising from the Trust Fund by resulting trust or otherwise and any acts determinations or otherwise by any party or by any subsequent Settlor or Trustee attempting or claiming to create such interest or benefit is void.
- (ii) The provisions of this Deed and any acts, determinations or otherwise by any party hereto or by any Settlor, Appointor or Trustee are subject (to the extent that it applies to the Trust) to compliance with the rule against perpetuities.

## **TRUSTEE CEASING OFFICE**

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11. If the Trustee:-
- (a) dies; or
- (b) becomes bankrupt or seeks relief under bankruptcy laws;
- (c) becomes incapable of managing their affairs (as determined by a relevant tribunal or as certified by a registered medical practitioner);
- (d) is acting in the capacity of or for or on behalf of a trustee in bankruptcy, or a Registrar of the Family Court of Australia, or under an order of a Federal Magistrate Court under the Family Law Act;
- (e) being a body corporate, has a receiver, or receiver and manager, or official manager, or provisional liquidator, or liquidator or administrator appointed or if it enters into a scheme of arrangement that is not for amalgamation or reconstruction purposes or if an order is made or resolution passed that will have the effect of winding it up;
- then in each case the office of Trustee is vacated.

## **TRUSTEE RESIGNATION**

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12. (a) The Trustee may at any time resign from office by giving 7 days written notice to the Appointor or on obtaining the Appointor's written consent to their resignation.
- (b) A Person who has resigned or who has been removed as trustee of the Trust must, at the Trust's expense, transfer title to the Trust's assets to the Trustee, sign all documents and do all such things as may be necessary (including delivery of the books and records of the Trust) to permit the Trustee to carry out its duties.

## **MAJORITY VOTE OF TRUSTEES**

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13. If there is more than one Trustee of this Deed then the Trustees must act by majority vote.

## **TRUSTEE'S LIABILITY**

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14. The Trustee is not personally liable or accountable to any Beneficiary or any party to this Deed or their legal personal representatives for any loss or damage or in any manner whatsoever for any failure of the Trustee to exercise its discretion or power or in respect of any other default or neglect in carrying out or purporting to carry out its duties nor is it liable for any other loss or damage except in the case of the Trustee's willful dishonesty, neglect or bad faith.

## INDEMNITY OF TRUSTEE

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15. The Trustee shall be indemnified and held harmless out of the Trust Fund against all claims, costs, damages, losses, fees, expenses, taxes, duties, impositions and any other liabilities that arise in connection with or in consequence of this Deed or the trusts created by it. The Trustee has no right of indemnity against any one or more of the Beneficiaries.

## IN SPECIE DISTRIBUTION, MAINTENANCE & TRANSFERS

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16. The Trustee may in its absolute discretion at any time and from time to time:-
- In Specie Distribution
- (a) Instead of paying Income or capital to the Beneficiaries in cash, transfer any property of the Trust in whole or partial satisfaction of that Income or capital and for this purpose the Trustee may determine the value of any property to be so transferred and any entries or minutes in the Trustee's account or records shall be deemed conclusive evidence of the value of such property.
- Maintenance
- (b) apply pay or credit the whole or any part of the capital of the Trust or the Income of the Trust to or for the maintenance, education, advancement in life to or for any one or more of the Beneficiaries.

## REMUNERATION OF TRUSTEE

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17. (a) The Trustee shall be entitled to be reimbursed for expenses and costs properly incurred in acting as trustee of this Trust or otherwise incidental to the provisions of this Deed and is entitled to such remuneration, if any, as the Trustee may determine.
- (b) Any Trustee being a solicitor, accountant or other Person engaged in a profession shall be entitled to charge and be paid all usual professional charges for services rendered by it in connection with the Trust or incidental matter even if those services could have been provided by a non-professional Trustee.

## RECEIPTS

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18. The receipt in writing of the Trustee is a complete discharge to any Person paying or transferring anything to the Trustee and the payer is not bound to see to the application of it. The receipt in writing of the payee or the secretary, treasurer or any other officer or employee or member of a payee who is a Beneficiary is a complete discharge to the Trustee in respect of anything paid or transferred to a Beneficiary and the Trustee is not bound to see to the application of it.

## VARIATION

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19. (a) Subject to sub-paragraph 19 (b), the Trustee may at any time by deed or instrument in writing or by written or oral resolution add to, alter, vary, modify, delete or otherwise amend any provision of this Deed in such manner as it may in its absolute discretion decides. In amplification of this power the Trustee may at any time, in its absolute discretion add or remove a Person as a Beneficiary
- (b) No such addition, alteration, variation, modification or amendment shall be capable of being made if it:
- (i) infringes the rule against perpetuities, extends the Vesting Date beyond the maximum period that the Trust may exist at law, or paragraph 10; or
  - (ii) varies, alters, revokes or amends this paragraph or paragraph 10; or
  - (iii) has the effect of divesting or modifying the interest of any Beneficiary who has become presently, indefeasibly and absolutely entitled to capital or Income of the Trust under this Deed; or
  - (iv) appoints or otherwise includes an Excluded Person as a Beneficiary of the Trust.

- (c) The Trustee may at any time renounce the power contained in this sub-paragraph 19 (a) and upon such renunciation and to the extent thereof such power shall be terminated and shall no longer be exercisable.

## DEALING WITH THIRD PARTIES

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20. (a) No Person dealing with the Trustee need:-
- (i) enquire as to the adequacy of the powers of the Trustee in relation to such dealing; or
  - (ii) enquire as to the proper exercise by the Trustee in relation to such dealing; or
  - (iii) enquire as to the proper exercise by the Trustee of any of the powers authorities and discretions vested in the Trustee; or
  - (iv) enquire as to the propriety or regularity of any transaction affecting the Trust Fund; or
  - (v) see to the application of any moneys paid to the Trustee or at the Trustee's direction.
- (b) Unless there is fraud on the part of any Person dealing with the Trustee any dealing is deemed, so far as that Person is concerned to be within the powers of the Trustee and to be valid and effectual. The receipt of the Trustee or the receipt of any Person paid at the direction of the Trustee is an effective discharge of all liability to that Person.
- (c) No mortgage, charge or other security given or created by the Trustee is invalid because of any error or omission whether of law or fact on the part of the Trustee.
- (d) If the Trustee enters into any arrangement with any lender or with any other financier or other party, no such lender, financier or other party need enquire whether there is any necessity for any borrowing, finance or other dealing by the Trustee or as to the purpose for which such borrowing, finance or other dealing is required nor as to the application of any monies so borrowed or financed.
- (e) Without limiting anything in paragraph 20, any Person having any dealing with the Trustee is entitled to assume that every power necessary to be exercised in relation to the giving or making of any instrument, resolution or certificate purporting to be made or given pursuant to or in accordance with the provisions of this Deed has been validly and properly exercised.

## RECORDS

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21. The Trustee will maintain minutes or records recording determinations by the Trustee under this Deed and such other matters as the Trustee decides desirable and they constitute prima facie evidence of the matters contained in them. If the Trustee is a body corporate, the minutes of meetings of that body corporate, so far as they relate to the Trust, suffice for the purposes of this paragraph.

## CEASING TO BE A BENEFICIARY

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22. (a) The Trustee may at any time, with the Appointor's written consent, remove a Beneficiary or a class of Beneficiaries from the whole or any part of Schedule 2 by signing a declaration to that effect and from the signing of that declaration and the Appointor's written consent, the Beneficiary shall no longer be a Beneficiary of this Trust in accordance with the terms of that declaration.
- (b) A Beneficiary may at any time disclaim their interest as a Beneficiary of this Trust by signing a declaration to that effect provided that the Appointor consents to that disclaimer in writing.
- (c) A disclaimer by a Beneficiary under this or any other provision of this Deed does not affect any Distribution made prior to the disclaimer by the Beneficiary nor any vested entitlement or other amount to which the Beneficiary has become presently and absolutely entitled.
- (d) A Person is an Excluded Person if:-
- (i) that Person is named or included in a class described in Schedule 3; or
  - (ii) that Person is named or included in a class described as Excluded Persons in a document signed by the Trustee; or
  - (iii) that Person signs a document declaring that they are an Excluded Person and gives it to the Trustee.

- (e) No Person presently and absolutely entitled to an interest in this Trust shall have that interest divested or modified where that Person became so entitled prior to their ceasing to be a Beneficiary or prior to them becoming an Excluded Person.

## **CORPORATE TRUSTEE**

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23. Without limiting anything in Schedule 4, every Trustee that is a body corporate may exercise or concur in exercising any discretion or power hereby conferred upon the Trustee by a resolution of that body corporate or by a resolution of its board of directors or governing body or may delegate the right and power to exercise or concur in exercising any such discretion or power to one or more members of its board of directors or governing body appointed from time to time by the board of directors or governing body for that purpose.

## **TRUSTEE'S DISCLOSURE**

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24. Without prejudice to any right of the Trustee under the general law to refuse disclosure of any document, the Trustee is not bound to disclose to any Person any of the following documents:-
- (a) any document disclosing any deliberations of the Trustee (or any of them) as to the manner in which the Trustee should exercise any power or any discretion conferred upon the Trustee by this Deed or disclosing the reasons for any particular exercise or non-exercise of any such power or any such discretion or the material upon which such reasons shall be or might have been based;
  - (b) any other document relating to the exercise or proposed exercise of any power or any discretion conferred on the Trustee by this Deed (not being legal advice obtained by the Trustee at the cost of the Trust).

## **APPOINTOR'S DISCLOSURE**

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25. Without prejudice to any right of the Appointor under the general law to refuse disclosure of any document, the Appointor is not bound to disclose to any Person any of the following documents:-
- (a) any document disclosing any deliberations of the Appointor (or any of them) as to the manner in which the Appointor should exercise any power or any discretion conferred upon the Appointor by this Deed or disclosing the reasons for any particular exercise or non-exercise of any such power or any such discretion or the material upon which such reasons shall be or might have been based;
  - (b) any other document relating to the exercise or proposed exercise of any power or any discretion conferred on the Appointor by this Deed.

## **ACTS OF TRUSTEE AND APPOINTOR**

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26. Unless another provision of this Deed requires the execution or signature of the Trustee or the Appointor when carrying out any act, a declaration signed by the Trustee or the Appointor, as the case may be, providing details of the relevant act is conclusive evidence of the valid carrying out of that act in accordance with this Deed and as stated in that declaration. This provision does not limit any other methodology.

## SCHEDULE 1

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NAME OF TRUST: Sample Discretionary Trust

DATE OF DEED:

SETTLOR: SETTLOR, BOB  
22 Smith Street  
Castle Hill NSW 2154

TRUSTEE: SAMPLE DISCRETIONARY COMPANY PTY LTD  
A.C.N. 622 547 871  
UNIT 4  
4 GLADSTONE ROAD  
CASTLE HILL NSW 2154

SETTLED SUM: \$5.00

APPOINTOR: DUCK, Donald  
22 GLADSTONE ROAD  
CASTLE HILL NSW 2154

DUCK, Daisy  
22 GLADSTONE ROAD  
CASTLE HILL NSW 2154

PROPER LAW: The proper law of this Deed is the law of NSW  
unless the Trustee determines that the proper law shall be that of any other  
place which the Trustee considers reasonably connected with this Trust.

## SCHEDULE 2

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### BENEFICIARIES

NAMED BENEFICIARIES:

DUCK, Donald  
DUCK, Daisy

SPOUSE: The Spouse of a Named Beneficiary.

CHILD OF A NAMED BENEFICIARY: The children of a Named Beneficiary.

GRANDCHILD OF A NAMED BENEFICIARY: The grandchildren of a Named Beneficiary.

RELATIVE: The relatives of a Named Beneficiary.

ANY OTHER SPOUSE: Any person who is a Spouse of a Beneficiary.

CHILD: The children of any Person who is a Beneficiary.

COMPANY: Any company or incorporated entity in which a share is held for the time being by any Person described opposite any other heading in this Schedule. Any company or legal entity whenever incorporated in which any share is held by the Trustee.

TRUSTS: Any Person in his or her capacity as the trustee of a trust established anywhere at any time under which any person who otherwise falls within the definition of "Beneficiary" under any other provision of this Deed has any interest, whether or not it is expectant, prospective, contingent or vested and irrespective of whether others have any interests in that trust.

CHARITIES AND ASSOCIATIONS: The trustee of any charitable trust in that capacity and any society, authority, institution, church, religious order, corporation, Person or entity which at the time a Distribution to it is made by the Trust, is exempt from income tax under the Act or, if at that time a gift to it is deductible against assessable income of the donor under the Act.

TRUSTEE: The Trustee as at the date of this Deed.

**SCHEDULE 3**

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**EXCLUDED PERSONS**

Sample Only, Subject to Copyright

## SCHEDULE 4

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### POWERS

The Trust Fund shall be invested in any manner the Trustee in its absolute discretion determines. Without limitation and subject to this Deed, the Trustee is entitled to exercise any of the powers, authorities and discretions in this Schedule.

#### Invest as if beneficial owner

1. Invest all or any money forming part of the Trust Fund as if the Trustee were in all respects beneficially entitled to it in any form of real property or personal property wherever situated and whether involving liabilities or not and whether in possession or reversion and whether producing income or not and whether secured or unsecured and on such terms and conditions as the Trustee in its absolute discretion decides and either solely or with one or more persons as joint tenant or as tenant in common.

#### Investments

2. Make any investment for cash or otherwise and on any terms and conditions the Trustee decides and make or purchase any investment for an amount even if it is greater than the amount of the Trust Fund and the Trustee may agree to pay for the investment wholly or in part from future money which may come into its hands including dividends profits interest or other income payable in respect of it and to acquire by purchase or gift livestock and other personal property.

#### Power despite conflict of interest

3. All powers may be exercised by the Trustee:-
  - (a) despite any conflict which may arise on the part of the Trustee, and if the Trustee is a corporation, on the part of any of its directors;
  - (b) notwithstanding that:-
    - (i) it is interested directly or indirectly in any property or any corporation, body corporate or public body in which any part of the Trust Fund is invested;
    - (ii) any Beneficiary is interested directly or indirectly in any property or any corporation or public body in which any part of the Trust Fund is invested;
    - (iii) it has from time to time or at any time exercised all or any of the powers conferred upon it either alone or in conjunction with any other person or persons, including any other trust and the Trustee in its capacity, as trustee, of any other trust;
    - (iv) it has sold all or any of the investments of the Trust Fund for cash or upon terms and conditions.

#### Changing investments

4. Change, vary and transfer any property from time to time forming part of the Trust Fund for others hereby or by law authorised.

#### Corporate Trustee can exercise powers of a natural person

5. If any Trustee is a body corporate, that Trustee has power, in addition to any other powers it may have, to exercise as trustee any power the Trustee could exercise if it was a natural person and not a trustee.

#### Exercise powers despite personal interest

6. To exercise or concur in exercising all of its powers authorities and discretions notwithstanding that the Trustee or any Person being a Director or shareholder of the Trustee (if a body corporate) has or may have a direct or personal interest (whether as trustee of any other trust or in a personal capacity or as a Director or shareholder of any corporation or otherwise) in the mode or result of exercising such power authority or discretion or may benefit either directly or indirectly as a beneficiary or otherwise as a result of the exercise thereof and notwithstanding that the Trustee for the time may be a sole Trustee.

#### Borrowing

7. Borrow or raise money or to join with any Person in borrowing or raising money for any of the purposes of this Trust or the exercise by the Trustee of any of its powers authorities or discretions upon such terms and conditions and with or without security or interest as the Trustee in its absolute discretion deems fit. For the purpose of any such borrowing or raising to mortgage charge or encumber the whole or any part of the Trust Fund. No lender advancing money to the Trustee shall be concerned to see to the application thereof or the purpose of such borrowing or otherwise. The Trustee may mortgage or charge in favour of

the lender the whole or any part of the Trust Fund or any part of it to secure the repayment of any moneys together with interest, if any, at such rate as the Trustee thinks fit either by charge or legal or equitable mortgage or otherwise and with such powers and provisions and upon such terms as the Trustee shall from time to time think fit.

#### **Bank Accounts**

8. Open and operate any account with any bank or financial institution in credit or in overdraft and to sign endorse accept execute and issue bills of exchange, promissory notes, bills of lading, warrants and other negotiable or transferable securities or instruments in connection with or incidental to any investment, business or venture in respect of which any part of the Trust Fund is employed or in connection with any transaction relating to the Trust Fund or the trusts hereof and to delegate to any one Person alone or together with any other Person or Persons the foregoing powers.

#### **Bank Requirements**

9. (a) Enter into any transaction of any kind including mortgages, guarantees, charges, letters of credit, third party securities or otherwise of any kind with any bank, building society or financial institution (in this paragraph referred to as "bank") as it thinks fit.
- (b) Such bank may have recourse to the assets of the Trust and to satisfy any liability of the Trust properly incurred by the Trustee as trustee of the Trust and arising out of any such transaction with such bank.
- (c) The Trustee is empowered to give an authority and power of attorney to the bank to provide for bank officers to draw, present and sign (whether as drawer, acceptor or endorser) bills on the Trustee's behalf.

#### **Guarantees and Indemnities**

10. (a) Guarantee, indemnify or become surety for, with or without security and with or without remuneration, the due payment of money or debts of any Person and to guarantee, indemnify or become surety for, with or without security and with or without remuneration, the due performance of any contract agreement covenant or obligation of any Person.
- (b) To give any guarantee and/or indemnity or otherwise become liable for the payment of money or the performance of any contract or other obligation by any Person including the Trustee in its personal capacity or as a trustee of any other trust and if the Trustee thinks fit to give security for any such guarantee and/or indemnity or other liability over all or any part of the assets of the Trust Fund and to exercise all or any of these powers whether or not there is consideration or benefit to the Trust and either alone or jointly with any Person including a trustee of any other trust or the Trustee in its personal capacity or as a trustee of any other trust and to assume joint or joint and several or several liability in respect of any joint exercise of the said powers.
- (c) To give any guarantee or indemnity for payment of moneys or the performance of any contract obligation or undertaking by any person firm body corporate corporation or association upon such terms with or without security as the Trustee deems fit and to secure any such guarantee or indemnity by mortgaging or charging by a fixed and/or floating charge or otherwise and in any manner the Trustee thinks fit in respect of all or any part of the Trust Fund including any property which may subsequently be acquired by the Trustee so that it will form part of the Trust Fund and the rights of the mortgagee or charge or Person or legal entity having the benefit of such security shall take priority in all respects over the rights of the Beneficiaries.

#### **11. Trading Facilities**

- (a) Enter into any trading facility whether in connection with a flexible trading facility or margin lending facility with any financial institution or other entity and to execute all such documents and comply with such terms and conditions as may apply to such facility and the Trustee shall subject to this Deed be entitled to be indemnified out of the assets of the Trust to satisfy any liability properly incurred by the Trustee arising out of such facility.

#### **Exchange of payment streams**

- (b) Directly or indirectly to enter into any transaction involving or in connection with, an exchange of streams of payment between parties.

**Commodities, Securities and Currencies**

- (c) Enter into any transaction for purchase or dealing or otherwise involving, or in connection with, trading commodities, securities or currency (including cryptocurrencies and tokens).

**Hedging**

- (d) Enter into any transaction for hedging, managing or protecting against movements in currency exchange, interest or discount rates or in respect of costs of borrowing, lending or entering into financial facilities or arrangements.

**Swaps**

- (e) Without limiting any other power, to enter into any currency or interest rate exchange or swap of any description.

**Charging Assets**

- (f) Enter into any mortgage, charge, pledge, security or otherwise over all or any assets of the Trust to secure the payment or the performance of any contract or obligation in connection with any transactions to which the Trustee is a party or as security for any borrowing, facility, guarantee, indemnity, lease, derivative, transaction or other contractual obligation.

**Derivatives and Other Financial Dealings**

- (g) To enter into any derivatives transaction including but not limited to any contract or purchase or sell or deal in any derivatives product, including any interest rate swap, currency swap, currency option, interest rate option, swaption, smart forward, money market transaction, foreign exchange transaction, margin foreign exchange transaction, futures transaction, forward rate agreement, forward rate bill transaction, synthetic forward exchange transaction, deposit transaction, currency transaction, interest rate transaction, bond option, commodity (including precious metals, electricity or energy) option or other transaction, credit derivative, equity derivative, capital market transaction, securities buy-back transaction or sell-back transaction and any other product traded, or transaction undertaken, on financial markets (whether on an exchange or not) from time to time and at any future time and synthesis or derivative of any of them and any option on any transaction or product referred to in this paragraph and otherwise to do and perform all things so as to operate, utilise or deal with the facilities of any stock or futures exchange either directly or through any broker or agent in any market in any part of the world.

**Master Agreements**

- (h) Enter into any master agreement(s) being any agreement (however described) that sets out the terms of, or otherwise relates to, any derivative transaction, and which is published or prepared by any bank, financial institution, domestic or international financial industry body or association, and any schedule, annexure, annex, supplement, addendum (however described) to, or of, that agreement.

**Security for Performance**

- (i) Give and execute any mortgage, charge or other security over all or any part or parts of the assets of the Trust as may be required to secure the payment or the performance of any contract obligation under or in connection with any transaction.

**Payment by transfer of property**

12. While any mortgage, debts or any other moneys remain owing by the Trustee in its capacity as trustee under this Deed, the Trustee may apply transfer or portions of the Trust Fund as it decides in payment in part or in whole of the relevant liability.

**Advances and Loans**

13. Advance or lend money forming part of the Trust Fund to any Person including a Beneficiary, body corporate, trustee or governmental or semi-governmental body or authority wherever situated for such period and on such terms and conditions and with or without security or interest as the Trustee in its absolute discretion decides.

**Sell and Disposal of Property**

14. Sell, alienate or otherwise dispose of all or any part of the Trust Fund in such manner by private treaty or auction and for such price in money or other consideration and upon such terms and conditions as the Trustee decides and to receive the consideration, if any.

### **Acquisition of Property**

15. Acquire in any manner (including by lease or licence) any property whether real or personal upon such terms and conditions as the Trustee decides.

### **Land and Development**

16. Apply any money for the time being forming part of the Trust Fund in improving or developing any land which or the proceeds of sale of which may for the time being be subject to the Trust or erecting, enlarging, improving or rebuilding any buildings on that land and power to conduct farming operations.

### **Exchange of property**

17. On such conditions as the Trustee determines, exchange any property forming part of the Trust Fund for any other property.

### **Incorporation and promotion of any corporation**

18. Incorporate, promote or acquire either alone or with any other Person any corporation in any place under the law of that place with limited or unlimited liability for any purpose the Trustee may determine and without limitation, a purpose may be the acquiring of the whole or any part of the Trust Fund and so that the consideration of the sale of the Trust Fund or any part of it to any corporation incorporated pursuant to this paragraph may consist wholly or partly of securities of the corporation which may be credited as fully paid and may be allotted to or otherwise vested in the Trustee and be capital moneys in the Trustee's hands.

### **Consent to reconstruction**

19. Consent conditionally or otherwise to any reconstruction or reorganisation of any corporation and securities of which form part of the Trust Fund and to consent to any reduction of capital or other dealing with shares, securities or otherwise as the Trustee determines.

### **Determination of income / capital accounts**

20. Determine in any Financial Year whether any receipt, profit, gain or payment, loss or outgoing of any sum of money or notional amount is to be treated as on account of capital or income or partly on account of one and partly on account of the other and in what proportions.

### **Power to define Income**

21. The Trustee may in its absolute discretion determine at any time on or before the end of the applicable Financial Year that, in respect of that Financial Year the income of the Trust and or whether income includes any amount, profit or gain that would not be included as income for the purposes of tax or accounting. Without limiting this power, the Trustee may, for example, determine that income means net income that is determined in accordance with section 95(1) ITAA 1936.

### **Creation of New Trust**

22. (a) Appoint by a deed that is irrevocable a trustee of any part or all of the Trust Fund for the benefit of any one or more of the Beneficiaries (whether that Beneficiary or those Beneficiaries are absolutely, contingently, presently or prospectively beneficiaries under the terms of that trust) and assign or transfer to that trustee the part or whole of the Trust Fund, or any terms and conditions the Trustee decides.  
(b) The Trustee is indemnified against any losses arising from the appointment.  
(c) The part of the Trust Fund assigned or transferred to the trustee at the time of assignment or transfer ceases to be subject to this Trust unless the Trustee and the trustee of the newly appointed trust agree in writing otherwise.  
(d) The Trustee may not exercise its powers under this provision unless the Appointor consents in writing, the exercise does not infringe the rule against perpetuities and it does not have the effect of divesting or modifying the interest of any Beneficiary who has become presently, indefeasibly and absolutely entitled to the capital or Income of the Trust Fund under this Deed.

### **Exercising rights attaching to securities**

23. Exercise or concur in exercising the rights attaching to any securities forming part of the Trust Fund to become a director or other officer or employee of any corporation and to vote for and to be paid and to retain for the Trustee's own use and benefit reasonable remuneration for the Trustee's services to that corporation.

### **Calls and Payment for Shares**

24. Pay application moneys and calls on shares and for that purpose raise money on the security of the Trust Fund and to accept transfers of stock shares and debentures and concur in any arrangement for the

modification of the rights of the holders of any debentures of any of the stocks or shares of any body corporate in which the Trust Fund or any part thereof may from time to time be invested.

#### **Acquisition of Shares, Stocks and Debentures**

25. Acquire by allotment, purchase or otherwise the shares or stock whether ordinary, preferred, deferred, redeemable or otherwise and whether partly or fully paid or having any liability thereof of any body corporate wherever located or incorporated and whether public, proprietary or private and any debenture note or other securities of any such body corporate or of any municipal or statutory authority in the Commonwealth of Australia or any British dominion, colony or possession or any foreign country with power to take up new shares or other securities in any such body corporate or authority.

#### **Surrender securities**

26. On such conditions as the Trustee determines, surrender and deliver up any securities forming part of the Trust Fund to any corporation.

#### **Grant options**

27. Grant options in respect of any property forming part of the Trust Fund to any Person and on such terms and conditions as the Trustee in its absolute discretion deems fit and to enter into any option agreement relating to any lending or financing facility, agreement or transaction.

#### **Unit Trusts**

28. Invest in units or sub-units of any fixed or flexible unit trust whatsoever.

#### **Employment of agents**

29. Employ agents in the execution of the trusts and powers in this Deed and instead of acting personally from time to time to employ and pay out of the Trust Fund such managers, agents, advisers, solicitors, accountants or other Persons or transact any business or to do any act required to be done in connection with the administration of the trusts hereof declared including the receipt and payment of money. In amplification of these powers to delegate in writing the exercise of all or any of the powers or discretionary authorities conferred on the Trustee and to execute any Power of Attorney or other instrument necessary or advisable to effectuate such appointments and purpose.

#### **Delegation**

30. The Trustee may in writing delegate the exercise of all or any of the powers or discretions hereby conferred on the Trustee and execute powers of attorney or other instruments necessary to effectuate such purpose.

#### **Employ professionals**

31. Employ such professional or other Persons as the Trustee may determine including services from a partner of a Trustee or from a person who is a director or shareholder of a corporation which is a Trustee.

#### **Settlements and Compromises**

32. Settle or compromise upon such conditions as the Trustee determines all matters arising under this Trust or in relation to the Trust Fund and such settlement or compromise shall be final and binding on the parties hereto and the Beneficiaries.

#### **Determining Doubtful Matters**

33. Determine all questions and matters of doubt which may arise in the course of the administration of the Trust Fund and otherwise arising from this Deed.

#### **Institute and Defend Proceedings**

34. Institute and defend proceedings and to proceed to their final determination or compromise as the Trustee decides.

#### **Acceptance of Property**

35. Accept any property which may be transferred to the Trustee to form part of the Trust Fund by any Person either personally or by testamentary act or disposition.

#### **Leases**

36. Lease all or any part of any real or personal property for the time being subject to the trusts hereof for any period upon such terms and conditions and for such rent as the Trustee shall in its absolute discretion think fit and make allowances to or with tenants and others and accept surrenders and waive breaches of covenants and determine tenancies.

**Lease, licence or hire purchase**

37. Give or take on lease, licence or hire purchase any kind of real or personal property and on such terms as the Trustee shall in its absolute discretion determine.

**Outgoings and Management**

38. Pay all insurance premiums, rates, taxes, rents and other outgoings in connection with any real or personal property subject to the trusts in this Deed and manage the property and effect such repairs as the Trustee may consider necessary or advisable to that property and where the Trustee is unable to charge expenditure against income from that property it may pay from capital.

**Insurance**

39. Invest in the acquisition of a policy or policies of life insurance or assurance including endowment assurance upon such life or lives as the Trustee shall think fit.

**Protection of Property**

40. Do all such things as the Trustee in its absolute discretion deems fit for the adequate protection of any part of the Trust Fund or otherwise for giving effect to this Trust and to do all such other things as may be incidental to the exercise of any of the powers authorities or discretions of the Trustee.

**Partnership**

41. Enter into partnership from time to time with any Person and in all respects upon such terms and conditions as the Trustee shall think fit whether or not the Trustee is a member of any such partnership in its own individual right or is a shareholder in or director of any corporation that is a member of any such partnership with power to vary the terms and conditions of that partnership.

**Reciprocal Arrangements and Partnership**

42. Invest in any entity or acquire any business situated and/or to enter into any partnership or into any arrangement for sharing of profits, union of interest, co-operation, joint venture, reciprocal concession or otherwise with any one or more Person for any business or enterprise.

**Termination of Partnership**

43. Terminate upon such terms and conditions as the Trustee shall think fit any partnership and to join in and be a party to any partition of the assets of that partnership.

**Professions, trades and business**

44. Conduct or carry on or to join with any other Person in conducting or carrying on any profession which may be lawfully carried on by the Trustee, trade or business and to use for such purposes such money, land or other assets whatsoever as the Trustee shall think fit despite any personal interest the Trustee may have in that profession trade or business.

**Investment for Beneficiaries under a legal disability**

45. At any time to invest any money whether capital or income to which any of the Beneficiaries who are under a legal disability are or may become entitled either by exercise of the discretion of the Trustee or otherwise in any securities as it is by this instrument or by law authorised to invest the Trust Fund.

**Blending**

46. To blend for any purposes as the Trustee may from time to time decide, any moneys which the Trustee holds upon the trusts of this Deed with other moneys (whether or not those moneys are subject to any other settlement or trust and whether or not the Trustee is trustee of such other settlement or trust) and to join with any other person or persons including a trustee of another trust in making common investments including in carrying on any business, partnership or joint enterprise.

**Occupation by Beneficiaries**

47. Allow any one or more of the Beneficiaries to occupy, have custody of or use any property forming part of the Trust Fund on any terms and conditions (including on payment or free of charge) as the Trustee determines.

**Investment where a discharge cannot be obtained**

48. If the Trustee holds any money for which it cannot obtain a proper discharge then it may invest such money in any form of investment authorised by this Deed and in addition in any shares or stock of any body corporate irrespective of the rights attaching to the shares and in loans of any nature whether secured or unsecured and on such terms as the Trustee thinks fit, to any Person.

**Patents, trademarks and licences**

49. Accept and to hold or to appoint any Person on its behalf to accept and hold any patents, trademarks, licences or other intellectual property rights and to accept or authorise any Person on its behalf to accept any liabilities or duties and to enter into any restrictive covenants or ties in conjunction therewith as it decides.

**Retain property in present state**

50. Retain any property in the present state or condition in which it is received for such period as the Trustee determines and irrespective of whether that property is of a wasting nature.

**Alienation**

51. Generally to perform all acts of alienation and hypothecation and other acts of ownership to the same extent and with the same effect as might have been done if this Deed had not been made and the decision and action of the Trustee whether actually made or taken in writing or implied from the acts of the Trustee is conclusive and binding on all the Beneficiaries and others who in the future acquire any interest under this Deed.

**Trustee contracting with itself**

52. The Trustee shall not be disqualified from dealing or contracting with itself beneficially and is empowered to enter into contracts or agreements with itself provided that it shall have previously declared its interest.

**Agreements with the Commonwealth**

53. The Trustee has the power to enter into any agreement with the Commonwealth or any Commonwealth instrumentality.

**Agistment**

54. Grant and accept rights of agistment, or join with any other Person in granting or accepting rights of agistment with regard to any property or interest of the Trust Fund or otherwise and on such terms and conditions and for such periods as the Trustee determines.

**Generally**

55. Generally to deal with all and any real and personal property including without limitation, to sell, call in, convert into money, grant options or rights to purchase, mortgage, charge, sub-charge, grant security interests in, carry on business, or otherwise deal with, dispose of or transfer any item or asset comprising the whole or part of the Trust Fund or otherwise held by the Trustee under the terms of the Trust for such consideration and on such terms as in its absolute discretion it may think fit as if it were the absolute and beneficial owner of the Trust Fund.

## SCHEDULE 5

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### DEFINITIONS & INTERPRETATION

- (a) "Act" means the Income Tax Assessment Act 1936 ("ITAA 1936") and/or 1997 ("ITAA 1997") (as applicable) and any amendment of either Act and or any Act replacing either or both of them (as applicable).
- (b) "Appointor" means the Person(s) referred to as the Appointor in Schedule 1 or the Person(s) for the time being appointed as the Appointor pursuant to this Deed or a Person holding the Power of Appointment referred to in paragraph 9.
- (c) "Beneficiary" & "Beneficiaries" means the Beneficiaries in Schedule 2 whether born or in existence on the date of this Deed or at any other time however excluding a Person who is an Excluded Person even if that Person's name or identity is contained in Schedule 2.
- (d) "capital gain" has the same meaning as in section 995-1(1) of the ITAA 1997.
- (e) "Categories of Income" mean the categories of income referred to in paragraph 3(c) which the Trustee has separately identified, characterised, and/or recorded in the accounts or records of the Trust or elsewhere so that it may be separately identified and dealt with as provided in paragraph 3 or elsewhere in this Deed and "Category of Income" has a corresponding meaning.
- (f) "Child" includes an adopted child and a step-child and whenever born, adopted or becoming a step-child.
- (g) "de facto relationship" has the same meaning as in section 4AA of the Family Law Act 1975 (Cth).
- (h) "Deed" means this deed including all its Schedules, as may be amended from time to time.
- (i) "Distribute", "Distributed" and "Distribution" includes pay, transfer, assign, set aside, credit or otherwise appropriate in the accounts or records of the Trust and also includes any resolution of the Trustee to do so.
- (j) "Excluded Person" has the meaning given in paragraph 22(d).
- (k) "financial benefit" has the same meaning as in section 995 - 1(1) of the ITAA 1997;
- (l) "Financial Year" means a financial year commencing on the 1st of July and ending on the 30th of June in the following year and in respect of any broken period occurring at the commencement of this Deed means the portion of the Financial Year running in the case of such commencement from the date hereof to the 30th of June next and in the case of termination from the 1st of July last preceding such termination to the date of such termination.
- (m) "Income" of the Trust has the meaning given by the exercise of the Trustee's powers under this Deed (including paragraph 21 of Schedule 4) to determine income of the Trust and if the Trustee does not exercise those powers in a particular Financial Year, then income means all profits and gains taken into account in calculating net income of the trust and exempt income under the Act plus any other profit or gain considered income of the Trust for accounting purposes.
- (n) "Named Beneficiary" means a person whose name is specified in Schedule 2 opposite and/or immediately beneath the sub-heading "Named Beneficiaries".
- (o) "Person" includes an individual, corporation, body corporate and any legal entity, whether acting as a trustee or not.
- (p) "relative" in relation to any natural person means the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, child or other lineal descendant of that natural person or of their Spouse for the time being.

- (q) "Settled Sum" means the amount paid by the Settlor to the Trustee and referred to in Background paragraph (b) of this Deed.
- (r) "Settlor" means the person referred to as the Settlor in Schedule 1 hereto.
- (s) "specifically entitled to a capital gain" has the same meaning as in section 995-1(1) of the ITAA 1997;
- (t) "specifically entitled to a franked distribution" has the same meaning as in section 995-1(1) of the ITAA 1997;
- (u) "Spouse" includes in relation to any person, another person who is in a de facto relationship with that person and includes a previous Spouse.
- (v) "Trust" means the trust hereby established.
- (w) "Trust Fund" includes:
- (i) the Settled Sum;
  - (ii) property accepted by the Trustee as an addition to the property held as part of the property of the Trust;
  - (iii) property acquired or received by the Trustee pursuant to or in consequence of the Trust created by this Deed;
  - (iv) accumulated income and accretions from the above.
- (x) "Trustee" means the Trustee referred to as the Trustee in Schedule 1 hereto or the Trustee for the time being of this Trust.
- (y) "Vesting Date" means whichever is the earlier date of the day being the eightieth anniversary of the execution of this deed or such date that the Trustee revocably or irrevocably appoints not being later than the eightieth anniversary of the execution of this Deed however if the laws of South Australia apply, then subject to these laws, such other date as the Trustee revocably or irrevocably appoints.
- (z) References to a section or part of legislation or legislative instrument includes that section or part as amended or replaced.
- (aa) Words importing the singular shall include the plural and vice versa and words importing one gender shall include any other gender.
- (bb) Headings are for convenience and reference only and do not affect the interpretation of this Deed.

Executed as a deed by the Settlor and Trustee on the date referred to in Schedule 1.

SIGNED SEALED and DELIVERED

By the Settlor

SETTLOR, BOB

in the presence of

.....  
SETTLOR, BOB

.....  
Witness (Signature)

.....  
Print Name of Witness

Executed for and on behalf of

SAMPLE DISCRETIONARY COMPANY PTY LTD  
A.C.N. 622 547 871

in their capacity as Trustee

.....  
Director

.....  
Director or Secretary

OR

.....  
Sole Director / Secretary

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